

LAW AND PUBLIC SAFETY

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Appeals: Stays; Extension of License Term; Renewal Applications and Appeals to the Appellate Division; Petitions for Relief to the Director Pursuant to N.J.S.A.

33:1-12.18: Required filings and required time for filings; Required contents of the Verified Petition to the Director; Role of the municipal issuing authority; Effect of the filing of a Verified Petition; No right to a hearing; Petitions for Relief to the Director Pursuant to N.J.S.A. 33:1-12.39: Required filings; Required contents of the Verified Petition to the Director; Role of the municipal issuing authority; Eminent domain and casualty exception; Standard of review; Right to a hearing; Effect of the filing of a Verified Petition.

Proposed Amendments: N.J.A.C. 13:2-17.8; 13:2-17.9

Proposed New Rules: N.J.A.C. 13:2-17.12; 13:2-42.1 to 42.5; 13:2-43.1 to 43.7

Authorized By: /s/

Jerry Fischer, Director

Division of Alcoholic Beverage Control

Authority: N.J.S.A. 33:1-39; 33:1-12.18; 33:1-12.39

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003 - 265

Submit written comments by September 5, 2003 to:

Jerry Fischer, Director

Division of Alcoholic Beverage Control

140 East Front Street

P.O. Box 087

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The agency proposal follows:

Summary

The Division of Alcoholic Beverage Control (Division) is proposing to amend and add a section to an existing subchapter and add two additional subchapters to its regulations, in response to two recently issued appellate court decisions regarding the Division's procedures.

Specifically, the Division is proposing to amend current sections, N.J.A.C. 13:2-17.8 and 13:2-17.9, and add an additional section, N.J.A.C. 13:2-17.12, to Subchapter 17 of its regulations. This subchapter outlines the procedures for appeals to the Division from actions by a municipal issuing authority upon a liquor license, including suspensions, revocations or denials of renewal. These amendments and new rule are intended to implement the guidance given to the

Division by the Appellate Division in an unreported decision, In the Matter of the Application of: El Piscis, Inc., Holder of Plenary Consumption License No. 0912-33-090-004 Issued by the Municipal Board of Alcoholic Beverage Control of the Town of West New York, Docket No. A-1333-01T2 (unreported) (App. Div. 2002). In this case, the Appellate Division held that a licensee should not be penalized for failing to file a renewal application for a subsequent term when it was appealing the denial of renewal for a prior term and the license had not been extended until the appeal was decided. The court found that it was reasonable for the licensee to believe that any such filing would be futile, since its license expired at the conclusion of the term preceding the term for which renewal was denied by the same municipal issuing authority. Thus, in these circumstances, the licensee's failure to file a renewal application for the subsequent term while the appeal of a denial of renewal was pending was excusable. The amendments and new rule are designed to clarify this conclusion.

Additionally, the Division is proposing to add two new subchapters. Subchapter 42, Petitions for Relief to the Director Pursuant to N.J.S.A. 33:1-12.18, outlines the procedures for petitions to the Director requesting a Special Ruling, as authorized by the Alcoholic Beverage Control Act, permitting a municipal issuing authority to consider an application for a new license if the licensee failed to file a timely renewal application. N.J.S.A. 33:1-12.18 requires an application within 60

days following the expiration of the license renewal period, that is, September 28 of the year in which renewal is sought. This subchapter is in response to the Appellate Division's opinion in Olga Plata v. Division of ABC, Docket No. A-4013-01T1 (approved for publication) (App. Div. 2003). In this case, the court held that the filing of a renewal application with the municipal issuing authority on or before September 28 of the year in which renewal is sought is sufficient to satisfy the filing requirement of N.J.S.A. 33:1-12.18. The Appellate Division further held that regulations are necessary for the Division to require an applicant to file a separate verified petition with the Division by September 28 of the year in which renewal is sought. This subchapter provides the regulatory guidance called for by the court and further clarifies existing practices with regard to requests for relief pursuant to N.J.S.A. 33:1-12.18.

Subchapter 43, Petitions for Relief to the Director Pursuant to N.J.S.A. 33:1-12.39, outlines the procedures for petitions to the Director requesting a Special Ruling, as authorized by the Alcoholic Beverage Control Act, allowing a municipal issuing authority to consider a renewal application for a Class C license that has not been actively used in connection with the operation of a licensed premises for two or more full license terms.

The proposed amendment to N.J.A.C. 13:2-17.8 provides that, in cases where a revocation of a liquor license has not been stayed pending the outcome of

an appeal to the Director, the licensee need not file a renewal application and appropriate fees for each subsequent license term while the appeal is pending. If the revocation is not sustained on appeal, then the licensee shall be required to file renewal applications and pay the appropriate fees for each license term during which the appeal was pending, within 60 days of the date of the Director's decision or the license shall be deemed to have expired. A licensee must continue to file renewal applications in cases in which a suspension is involved or revocation has been stayed.

The proposed amendment to N.J.A.C. 13:2-17.9 also provides that, in cases in which a license has not been extended pending the outcome of an appeal to the Director, the licensee need not file a renewal application and appropriate fees for each subsequent license term while the appeal is pending. If the licensee prevails on appeal, then the licensee shall be required to file renewal applications and pay the appropriate fees for each term during which the appeal was pending, within 60 days of the date of the Director's decision or the license shall be deemed to have expired.

Proposed new rule N.J.A.C. 13:2-17.12 provides that, in matters where the Director's decision revokes a license or affirms a municipal decision to revoke or deny renewal of a license and the Director's decision has not been stayed pending an appeal to the Appellate Division, the licensee need not file a renewal application

and appropriate fees for each subsequent license term while the appeal to the Appellate Division is pending. If the licensee prevails on the appeal to the Appellate Division, then the licensee shall be required to file renewal applications and pay the appropriate fees for each term during which the appeal was pending, within 60 days of the date of the Appellate Division's decision or the license shall be deemed to have expired. Additionally, the new rule establishes that, in any other case involving an appeal to the Appellate Division from the Director's decision, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal to the Appellate Division is pending or the license shall be deemed to have expired.

New rule N.J.A.C. 13:2-42.1 establishes the type of and time for submitting required filings pursuant to N.J.S.A. 33:1-12.18. The rule provides that a licensee who fails to file a renewal application with the municipal issuing authority by July 30 of the year beginning the license term for which renewal is sought may request that the Director issue a Special Ruling to permit the municipal issuing authority to consider an application for a new license by (1) submitting an application for a new license and the appropriate fees to the municipal issuing authority by September 28 of the year beginning the license term; and (2) filing a Verified Petition and the statutory filing fee with the Director, with a copy of the Verified Petition sent to the municipal issuing authority, by September 28 of the year beginning the license

term. The filing deadline for the Verified Petition shall not be extended under any circumstances.

New rule N.J.A.C. 13:2-42.2 provides the required contents of a Verified Petition to the Director for relief pursuant to N.J.S.A. 33:1-12.18. The requirements include: identification of the licensee and the license number; proof that the application for a new license and the appropriate fees were submitted to the municipal issuing authority on or before September 28 of the year beginning the license term or proof that the licensee attempted to submit such an application and fees; a recitation of any efforts that were made to renew the license by July 30 of the year beginning the license term for which renewal is sought, including, but not limited to, the specific dates and details of any such efforts; whether the licensee has previously sought relief from the Director pursuant to N.J.S.A. 33:1-12.18; the signature of a notary or other person authorized to administer oaths in the State of New Jersey; and relevant documents supporting the statements made in the affidavit(s).

New rule N.J.A.C. 13:2-42.3 provides guidance as to the role of the municipal issuing authority when an application for a new license and the appropriate fees are submitted to it by a licensee between July 30 and September 28. However, the rule states that a municipality shall not act upon that application absent a Special Ruling from the Director granting relief pursuant to N.J.S.A. 33:1-

12.18. If a licensee attempts to submit such an application and fees during this time period and the application and fees are refused by the municipal issuing authority, the licensee shall be deemed to have complied with this subsection. Additionally, this new rule provides that upon receipt of a copy of a Verified Petition, the municipal issuing authority shall review the facts stated therein and provide the Division with comments, if any, that it may wish to make regarding the contents of the Verified Petition.

New rule N.J.A.C. 13:2-42.4 establishes that the filing of a Verified Petition pursuant to N.J.S.A. 33:1-12.18 for a particular license term does not eliminate the requirement that the licensee continue to apply for renewal of the license for subsequent license terms by June 30 of each year, while the Verified Petition is pending.

New rule N.J.A.C. 13:2-42.5 recognizes that there is no statutory right to a hearing on a request for relief pursuant to N.J.S.A. 33:1-12.18 and clarifies that the Director may grant or deny a Special Ruling based solely on the information provided in the Verified Petition. However, if the Director determines that there is a factual dispute, the Director may either conduct a hearing or transmit the matter to the Office of Administrative Law for a hearing governed by the Administrative Procedure Act, N.J.A.C. 1:1-1.1 *et seq.*

New rule N.J.A.C. 13:2-43.1 establishes the type of and time for submitting

required filings pursuant to N.J.S.A. 33:1-12.39. The rule provides that in order to request a Special Ruling seeking relief pursuant to N.J.S.A. 33:1-12.39, the licensee shall file a Verified Petition and the statutory filing fee for each year of relief requested with the Director, with a copy of the Verified Petition sent to the municipal issuing authority.

New rule N.J.A.C. 13:2-43.2 provides the required contents of a Verified Petition to the Director for relief pursuant to N.J.S.A. 33:1-12.39. The requirements include: complete identification of the licensee and the license number; the date on which the license became inactive and why; facts which demonstrate a willingness on the part of the licensee to activate the license; all efforts made by the licensee to activate the license; monetary expenditures incurred towards activation; the prognosis for activation; any factors outside of the licensee's control that may have thwarted efforts to activate the license; the need for any further active licenses in the community; whether the licensee has previously sought relief from the Director pursuant to N.J.S.A. 33:1-12.39; the signature of a notary or other person authorized to administer oaths in the State of New Jersey; and relevant documents supporting the statements made in the affidavit(s).

New rule N.J.A.C. 13:2-43.3 provides guidance as to the role of the municipal issuing authority when a renewal application for a Class C license that

has not been actively used in connection with the operation of a licensed premises for two or more full license terms and the appropriate fees are submitted by a licensee. However, the rule states that a municipality shall not act upon that application absent a Special Ruling from the Director granting relief pursuant to N.J.S.A. 33:1-12.39. Additionally, this new rule provides that upon receipt of a copy of a Verified Petition, the municipal issuing authority shall review the facts stated therein and provide the Division with comments, if any, that it may wish to make regarding the contents of the Verified Petition.

New rule N.J.A.C. 13:2-43.4 outlines the eminent domain and casualty exception contained in N.J.S.A. 33:1-12.39. This new rule provides that if a license becomes inactive as a result of eminent domain, fire or other casualty loss and the licensee submits a Verified Petition demonstrating a good faith effort to reactivate the license, in addition to the statutory two-year period provided for by N.J.S.A. 33:1-12.39, the licensee who suffered the loss shall be granted an extension for an additional two years.

New rule N.J.A.C. 13:2-43.5 provides that the standard of review to be applied in granting or denying a Special Ruling pursuant to N.J.S.A. 33:1-12.39 is good cause. In situations where there is a multi-term inactive license, there is a direct relationship between the length of inactivity and the prognosis for activation, as it relates to the quantum of proof necessary to establish good cause. Thus, the

Director will consider evidence and/or testimony presented in all prior petitions and rulings in determining whether good cause has been established. If a licensee receives a Special Ruling that provides a date certain for activation or there will be no further renewals of the license, the licensee shall only be eligible for additional relief upon a showing of extreme justification. This new rule also provides the factors to be considered if a licensee moves to reopen a Consent Order entered pursuant to this subchapter.

New rule N.J.A.C. 13:2-43.6 recognizes that there is a statutory right to a hearing on a request for relief pursuant to N.J.S.A. 33:1-12.39. Hearings held pursuant to this subchapter will be governed by the Administrative Procedure Act, N.J.A.C. 1:1-1.1 *et seq.*

New rule N.J.A.C. 13:2-43.7 establishes that the filing of a Verified Petition pursuant to N.J.S.A. 33:1-12.39 for a particular license term does not eliminate the requirement that the licensee continue to apply for renewal of the license for subsequent license terms by June 30 of each year, while the Verified Petition is pending.

A 60-day comment period is provided for this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The amended and new rules proposed by the Division set forth the parameters upon which applications for renewal must be filed in cases where a suspension or revocation has been stayed pending the outcome of an appeal to the Director and the requirements for filing petitions to the Director for relief pursuant to N.J.S.A. 33:1-12.18 and 33:1-12.39 respectively. These amended and new rules are in response to two recently issued appellate court decisions regarding the Division's procedures. The amendments and new rule in subchapter 17 of the Division's regulations concern the procedures for appeals to the Division from actions by a municipal issuing authority upon a liquor license, including suspensions, revocations or denials of renewal and are precipitated by the appellate court's direction in a recent unreported decision. The amended and new rule proposed clarify the renewal application requirements and procedures to be applied while certain municipal actions taken against a liquor license are under appeal, including appeals before the New Jersey Appellate Division.

The two new subchapters in this proposal outline the procedures for petitioning for relief in the form of a Special Ruling from the Director pursuant to N.J.S.A. 33:1-12.18 and 33:1-12.39 respectively. While the form of these rules is new, they are substantially a codification of existing agency policies regarding petitions to the Director pursuant to these two statutes.

Subchapter 42, Petitions for Relief to the Director Pursuant to N.J.S.A. 33:1-

12.18, outlines the procedures for petitions to the Director requesting a Special Ruling, as authorized by the Alcoholic Beverage Control Act, permitting a municipal issuing authority to consider an application for a new license if the licensee failed to file a timely renewal application. N.J.S.A. 33:1-12.18 requires an application within 60 days following the expiration of the license renewal period, that is, September 28 of the year in which renewal is sought. Recently, the Appellate Division held that regulations are necessary for the Division to require an applicant to file a separate Verified Petition with the Division by September 28 of the year in which renewal is sought. This subchapter is in response to the court's opinion and requires that a separate Verified Petition be filed by September 28. Additionally, the new rule specifies that the deadline for filing the separate Verified Petition with the Division shall not be extended under any circumstances.

Subchapter 43, Petitions for Relief to the Director Pursuant to N.J.S.A. 33:1-12.39, outlines the procedures for petitions to the Director requesting a Special Ruling, as authorized by the Alcoholic Beverage Control Act, allowing a municipal issuing authority to consider a renewal application for a Class C license that has not been actively used in connection with the operation of a licensed premises for two or more full license terms.

The amended and new rules contained in this proposal are intended to clearly explain to the regulated community the procedures and requirements for

filing renewal applications during municipal appeals and the procedures for filing certain petitions for consideration by the Director. While N.J.S.A. 33:1-23 requires the stringent and comprehensive administration of the alcoholic beverage laws, the statute also mandates that the Director “do, perform, take and adopt all other acts, procedures and measures” to ensure that the administration of the laws is fair and impartial. The amended and new rules contained in this proposal are intended to provide the direction to licensees recommended recently by New Jersey appellate courts, while enabling the Division to enforce the legislative intent expressed in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 *et seq.*, to strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State. Therefore, a positive social impact is realized by the adoption of these amendments and new rules.

Federal Standards Statement

A Federal standards analysis is not required since the proposed new rule and recodification is dictated and in accordance with N.J.S.A. 33:1-1, *et seq.* There are no federal requirements or standards applicable to this rulemaking.

Economic Impact

Failure to renew an alcoholic beverage license each year as required by law

results in the lapsing of the license and would have an obvious negative economic impact upon a licensee. Furthermore, failure to properly petition for required relief in the form of a Special Ruling from the Director pursuant to N.J.S.A. 33:1-12.18 or 33:1-12.39 could also result in the loss of a liquor license. Petitions under both N.J.S.A. 33:1-12.18 or 33:1-12.39 must be accompanied by a non-refundable fee of \$100.00 per petition per license year. This fee has been imposed by the New Jersey Legislature and is specified in the statutes describing each of these petitions, N.J.S.A. 33:1-12.18 and 33:1-12.39.

These amended and new rules clarify the procedures required by the Division in these instances. Additionally, while the form of some of these rules is new, they are substantially a codification of existing agency policies regarding the procedures for these petitions. These procedural provisions impose no substantial economic impact upon the applicants for a State or municipal license or permit and have no economic impact on the public at large. These rules are necessary and proper for the supervision of the alcoholic beverage industry.

The economic impact upon the Division and its regulated licensees will not be changed by the adoption of these amendment and new rules. Indeed, these regulations codify procedures which are already the policy of the Division. Local officials who review applications for renewal of alcoholic beverage licenses in their communities will continue to do so without any enhanced economic impact because

of the adoption of these amendments and new rules. The adoption of these amendments and new rules represents the needed procedural control to ensure, as best as possible, a uniform and strict compliance with the standards set forth in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1, *et seq.*

Regulatory Flexibility Analysis

Pursuant to the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16, *et seq.*, a “small business” means any business resident in this State that employs fewer than 100 full-time employees; is independently owned and operated; and is not dominant in its field. A percentage of the retailers in New Jersey’s alcoholic beverage industry could be considered "small businesses" within the meaning of the Regulatory Flexibility Act. The proposed amendments do not require professional services for compliance, since filings for appeals, and petitions pursuant to N.J.S.A. 33:1-12.18 and 33:1-12.39 may be made *pro se*. However, a licensee may engage legal representation, if desired, to handle the required filings pursuant to these amended and new rules.

The Division does not believe that the amendments and new rules will impose any undue burden on small businesses, in that the record keeping requirements imposed by the proposed amendments are not beyond those required by existing law and regulations. Because the Division is mandated to process

petitions pursuant to N.J.S.A. 33:1-12.18 and 33:12.39, and these proposed new rules and amendments are necessary to provide the procedures to maintain appropriate review, including the fee required in the statutes, no lesser requirements for small businesses are provided. There is no distinction made for a small business licensee since the requirements imposed are considered the minimum to effectuate the requirements of due process and to lessen the requirements would frustrate the pertinent statutory provisions. These rules impose compliance requirements that are uniform for all licensees regardless of size.-

Jobs Impact

The Division is not directly aware of any jobs that are likely to be generated or lost as a consequence of the proposed amendments.

Agriculture Industry Impact

The proposed amendments will have no impact on the agricultural industry in this State.

Smart Growth Impact

The Division does not believe that the proposed amendments will have any impact upon the achievement of smart growth or the implementation of the State

Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

NEW JERSEY ADMINISTRATIVE CODE

TITLE 13. LAW AND PUBLIC SAFETY

CHAPTER 2. DIVISION OF ALCOHOLIC BEVERAGE CONTROL

SUBCHAPTER 17. APPEALS

13:2-17.8 Stays

(a) The filing of an appeal from a suspension or revocation of a license by a municipal issuing authority shall act as an automatic stay of such suspension or revocation, unless the Director shall otherwise order. All other appeals shall not stay the effect of the action appealed from unless otherwise ordered by the Director or Administrative Law Judge.

(b) **In cases in which a suspension or revocation has been stayed pending the outcome of an appeal to the Director, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal is pending or the license shall be deemed to have expired.**

(c) **In cases in which a suspension has not been stayed or in which a revocation has been stayed and an indefinite suspension imposed pending the outcome of an appeal to the Director, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal is pending or the license shall be deemed to have expired.**

(d) In cases in which a revocation has not been stayed pending the outcome of an appeal to the Director, the licensee need not file a renewal application and appropriate fees for each subsequent license term while the appeal is pending. If the revocation is not sustained on appeal, then the licensee shall be required to file renewal applications and pay the appropriate fees for each license term during which the appeal was pending, within 60 days of the date of the Director's decision or the license shall be deemed to have expired.

(e) In all other cases, except those addressed in N.J.A.C. 13:2-17.9, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal is pending or the license shall be deemed to have expired.

13:2-17.9 Extension of license term

(a) Upon the filing of an appeal from the denial of an application for renewal of a license, or the failure to act upon such renewal application within the time set forth in N.J.A.C. 13:2-2.10(b), the Director may, at the time of the filing of the appeal, in the exercise of sound discretion, issue an order upon respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with ad interim relief extending the license pending the return of the order to show cause. If it [shall appear] appears that a substantial question of fact or law has been raised, and that irreparable injury to the appellant would [otherwise] result **if the license is not extended**, [the extension of license] **the Director may extend the license pending the outcome of the appeal**, subject to such **special conditions as the Director may deem appropriate**. [conditions as may be imposed, shall be continued pending a final determination of the appeal, or the expiration of the license term, whichever comes sooner.]

(b) In cases in which a license has been extended pending the outcome of an appeal to the Director, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal is pending or the license shall be deemed to have expired.

(c) In cases in which a license has not been extended pending the outcome of an appeal to the Director, the licensee need not file a renewal application and appropriate fees for each subsequent license term while the appeal is pending. If the licensee prevails on appeal, then the licensee shall be required to file renewal applications and pay the appropriate fees for each term during which the appeal was pending, within 60 days of the date of the Director's decision or the license shall be deemed to have expired.

13:2-17.12 Renewal Applications and Appeals to the Appellate Division

(a) If the Director's decision revokes a license or affirms a municipal decision to revoke a license or deny renewal of a license and the Director's decision has not been stayed pending an appeal to the Appellate Division, the licensee need not file a renewal application and appropriate fees for each subsequent license term while the appeal to the Appellate Division is pending. If the licensee prevails on the appeal to the Appellate Division, then the licensee shall be required to file renewal applications and pay the appropriate fees for each term during which the appeal was pending, within 60 days of the date of the Appellate Division's decision or the license shall be deemed to have expired.

(b) In any other case involving an appeal to the Appellate Division from the Director's decision, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal to the Appellate Division is pending or the

license shall be deemed to have expired.

**SUBCHAPTER 42. PETITIONS FOR RELIEF TO THE DIRECTOR, PURSUANT TO
N.J.S.A. 33:1-12.18**

13:2-42.1 Required filings and required time for filings

(a) A licensee who fails to file a renewal application with the municipal issuing authority by July 30 of the year beginning the license term for which renewal is sought may request that the Director issue a Special Ruling to permit the municipal issuing authority to consider an application for a new license by:

- 1. submitting an application for a new license and the appropriate fees to the municipal issuing authority by September 28 of the year beginning the license term; and**
- 2. filing a Verified Petition and the statutory filing fee with the Director, with a copy of the Verified Petition sent to the municipal issuing authority, by September 28 of the year beginning the license term. This filing deadline shall not be extended under any circumstances.**

13:2-42.2 Required contents of the Verified Petition to the Director

(a) The Verified Petition is a signed affidavit by the licensee and any other persons with personal knowledge of facts explaining why there were circumstances beyond the licensee's control that prevented the licensee from filing a renewal application by July 30 of the year beginning the license term for which renewal is sought. It shall also contain

the following information:

1. complete identification of the licensee and the license number;
2. proof that the application for a new license and the appropriate fees were submitted to the municipal issuing authority on or before September 28 of the year beginning the license term or proof that the licensee attempted to submit such an application and fees;
3. a recitation of any efforts that were made to renew the license by July 30 of the year beginning the license term for which renewal is sought, including, but not limited to, the specific dates and details of any such efforts;
4. whether the licensee has previously sought relief from the Director pursuant to N.J.S.A. 33:1-12.18; and
5. the signature of a notary or other person authorized to administer oaths in the State of New Jersey.

(b) Relevant documents supporting the statements made in the affidavit(s) shall be attached thereto.

13:2-42.3 Role of the municipal issuing authority

(a) The municipal issuing authority shall accept an application for a new license and the appropriate fees submitted by a licensee between July 30 and September 28, but it shall not act upon that application absent a Special Ruling from the Director granting relief pursuant to N.J.S.A. 33:1-12.18. If a licensee attempts to submit such an application and fees during this time period and the application and fees are refused by the municipal issuing authority, the licensee shall be deemed to have complied with N.J.A.C. 13:2-42.1(a)1.

(b) Upon receipt of a copy of a Verified Petition, the municipal issuing authority shall review the facts stated therein and provide the Division with comments, if any, that it may wish to make regarding the contents of the Verified Petition.

13:2-42.4 Effect of the filing of a Verified Petition

The filing of a Verified Petition for relief pursuant to N.J.S.A. 33:1-12.18 for a particular license term does not eliminate the requirement that the licensee continue to apply for renewal of the license for subsequent license terms by June 30 of each year, while the Verified Petition is pending.

13:2-42.5 No right to a hearing

There is no statutory right to a hearing on a request for relief pursuant to N.J.S.A. 33:1-12.18. The Director may grant or deny a Special Ruling based solely on the information provided in the Verified Petition. However, if the Director determines that there is a factual dispute, the Director may either conduct a hearing or transmit the matter to the Office of Administrative Law for a hearing. That hearing shall be governed by N.J.A.C. 1:1-1.1 et seq.

SUBCHAPTER 43. PETITIONS FOR RELIEF TO THE DIRECTOR, PURSUANT TO N.J.S.A. 33:1-12.39

13.2-43.1 Required filings

(a) No Class C license shall be renewed if that license has not been actively used in connection with the operation of a licensed premises for two or more full license terms

immediately preceding the license term for which renewal is sought, absent a Special Ruling from the Director allowing the municipal issuing authority to consider said renewal application.

(b) In order to request a Special Ruling seeking relief pursuant to N.J.S.A. 33:1-12.39, the licensee shall file a Verified Petition and the statutory filing fee for each year of relief requested with the Director, with a copy of the Verified Petition sent to the municipal issuing authority.

13.2-43.2 Required contents of the Verified Petition to the Director

(a) The Verified Petition is a signed affidavit by the licensee and any other persons with personal knowledge of the facts involving the inactive license. It shall contain the following information:

1. complete identification of the licensee and the license number;
2. the date on which the license became inactive and why;
3. facts which demonstrate a willingness on the part of the licensee to activate the license;
4. all efforts made by the licensee to activate the license;
5. monetary expenditures incurred towards activation;
6. the prognosis for activation;
7. any factors outside of the licensee's control that may have thwarted efforts to activate the license;
8. the need for any further active licenses in the community;
9. whether the licensee has previously sought relief from the Director

pursuant to N.J.S.A. 33:1-12.39; and

10. the signature of a notary or other person authorized to administer oaths in the State of New Jersey.

(b) Relevant documents supporting the statements made in the affidavit(s), shall be attached thereto.

(c) If the Verified Petition includes a contract of sale which provides for the transfer of the license, the Verified Petition shall be accompanied by an affidavit from the prospective purchaser regarding the prognosis for activation.

13:2-43.3 Role of the municipal issuing authority

(a) If a license meets the criteria stated in N.J.A.C. 13.2-43.1(a), the municipal issuing authority shall accept an application for a license renewal and the appropriate fees submitted by a licensee, but it shall not act upon that application absent a Special Ruling from the Director granting relief pursuant to N.J.S.A. 33:1-12.39.

(b) Upon receipt of a copy of a Verified Petition, the municipal issuing authority shall review the facts stated therein and supply the Division with comments, if any, that it may wish to make regarding the contents of the Verified Petition.

13:2-43.4 Eminent domain and casualty exception

If a license becomes inactive as a result of eminent domain, fire or other casualty loss and the licensee submits a Verified Petition demonstrating a good faith effort to reactivate the license, in addition to the statutory two-year period provided for by N.J.S.A. 33:1-12.39, the licensee who suffered the loss shall be granted an extension for an additional two years.

13:2-43.5 Standard of review

(a) The statutory standard to be applied in granting or denying a Special Ruling is good cause. In situations where there is a multi-term inactive license, there is a direct relationship between the length of inactivity and the prognosis for activation, as it relates to the quantum of proof necessary to establish good cause. Thus, the Director will consider evidence and/or testimony presented in all prior petitions and rulings in determining whether good cause has been established. If a licensee receives a Special Ruling that provides a date certain for activation or there will be no further renewals of the license, the licensee shall only be eligible for additional relief upon a showing of extreme justification.

(b) If a licensee enters into a Consent Order that provides a date certain for activation or there will be no further renewals of the license, the licensee may file a Motion to Reopen Consent Order with the Director. The motion shall only be granted upon a showing of extreme justification. The following factors will be considered in reaching this determination:

1. Was there a serious material event that occurred which prevented the license from being activated; and
2. Was the material event unforeseen at the time the Consent Order was entered into; and
3. Is the license transfer to a premises for immediate activation pending or is construction of premises near completion; and
4. Would denial of the Motion to Reopen the Consent Order, under the circumstances, result in manifest injustice.

13:2-43.6 **Right to a hearing**

(a) **There is a statutory right to a hearing on a request for relief pursuant to N.J.S.A. 33:1-12.39. That hearing shall be governed by N.J.A.C. 1:1-1.1 et seq.**

(b) **If a licensee enters into a Consent Order in lieu of a hearing and agrees to a date certain for activation or there will be no further renewals of the license, there shall be no further right to a hearing.**

13:2-43.7 **Effect of the filing of a Verified Petition**

The filing of a Verified Petition for relief pursuant to N.J.S.A. 33:1-12.39 for a particular license term(s) does not eliminate the requirement that the licensee continue to apply for renewal of the license for subsequent license terms by June 30 of each year and file additional Verified Petitions for relief pursuant to N.J.S.A. 33:1-12.39, if necessary, while the initial Verified Petition is pending.